

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs May 22, 2007

STATE OF TENNESSEE v. STACY WAYNE MYERS

Direct Appeal from the Circuit Court for Blount County
No. C-15834 D. Kelly Thomas, Jr., Judge

No. E2006-01610-CCA-R3-CD - Filed July 13, 2007

The defendant, Stacy Wayne Myers, appeals the trial court's revocation of his probation and reinstatement of his original sentence for domestic assault, arguing that the trial court abused its discretion in finding that he violated his probation. Following our review, we affirm the trial court's order revoking the defendant's probation and reinstating his original sentence.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ALAN E. GLENN, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR. and JOHN EVERETT WILLIAMS, JJ., joined.

J. Liddell Kirk, Knoxville, Tennessee (on appeal); and Raymond Mack Garner, District Public Defender, Maryville, Tennessee (at trial), for the appellant, Stacy Wayne Myers.

Robert E. Cooper, Jr., Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; Michael L. Flynn, District Attorney General; and Ellen Berez, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

On February 6, 2006, the defendant pled guilty to domestic assault, a Class A misdemeanor, and was sentenced to eleven months and twenty-nine days, with five days to be served in confinement and the balance on supervised probation. Conditions of his probation included undergoing an alcohol and drug assessment, completing the ETHRA Domestic Violence Intervention Program, refraining from committing or threatening any further violence against his wife, Danielle Myers, immediately reporting any subsequent arrest to his probation officer, informing his probation officer of any change in address, refraining from the use of intoxicants, submitting to drug screening,

obtaining his probation officer's permission to leave the state, and paying required probation fees.

Five months later, the defendant's probation officer, Carolyn Brewer, submitted a probation violation report. At the revocation hearing, Brewer testified that she filed the probation violation report because the defendant had failed to report a new arrest for aggravated assault against his wife that occurred on July 3, 2006, moved his residence without notifying her, tested positive for cocaine, failed to pay probation fees, and failed to attend the required anger management classes. Brewer also informed the court that the defendant had admitted to leaving the state without permission and to drinking alcohol. On cross-examination, Brewer acknowledged that the defendant had been regularly employed during the time of his supervised probation.

Danielle Myers testified that she had been married to the defendant for "[a]lmost two years" and that they did not have any children. Asked why they had moved after the defendant was placed on probation, she said they were evicted because they "kept fighting." She described the incident that led to their eviction: "[The defendant] had pulled me down the street. I had had surgery on my leg and it was in, like, a boot and he drug me down the street and threw my crutches. And the neighbors saw it and called our landlord, so we got evicted."

Mrs. Myers testified about another incidence of violence that took place at a party she attended with the defendant on June 11, 2006. She stated that on that occasion, the defendant attacked her as she tried to leave the party:

I was trying to leave because he was drunk and acting like he usually does. And he dragged me out to the car by my hair and started choking me and wouldn't let me up. So, his friend ran over and said, you want to hit on a girl, then why don't you hit a man. So, he punched his friend and then his friend beat him up.

She acknowledged that she did not call the police on either occasion because the defendant had threatened to burn down her house if she did and she was afraid of him.

Mrs. Myers also described the July 3, 2006, incident when the defendant was arrested for aggravated assault. She said that because the defendant suspected she had cheated on him, he choked her and beat her with a stick:

Well, we had moved into the trailer next to his mom's house. And he had thrown me out the night before and so I had left and spent the night by [sic] my friend's house. And so I didn't come home until the next day, that evening. So, I came home and he was really mad and he was drinking and he kept accusing me of cheating on him, and he choked me out on the ground. And when I was just fixing to come to, he grabbed some stick and just started hitting me with it and hitting me with it.

So when I got to the door, I ran outside – because the door was closed. And I opened up the door and I ran outside. And his mom was coming up from her house, because she – he had chased me outside with this – he had chased me outside with this stick and kept trying to hit me with it. So, she kept trying to say, no, getting in between us so he wouldn't hit me with the stick.

Her mother-in-law then drove her to a convenience store where a clerk called the police because he noticed she was bloody. She later was treated at a hospital and received four stitches in her ear.

Mrs. Myers identified photographs of her injuries depicting bruising to her chin, a large abrasion on her shoulder, a cut and bruising on her ear, and red marks on her neck. She said that the marks on her neck were caused by the defendant placing her in “a choke, in a hold” from behind. Asked if she had been rendered unconscious from the choking, she said, “It was like I almost was. I just kept thinking I was going to die. It lasted for a long time.”

Police Officer Emily Lawson testified that she was familiar with the defendant and Mrs. Myers because she had addressed “at least two” incidents of domestic violence at their residence and that she responded to the call regarding the July 3, 2006, incident. When Officer Lawson approached Mrs. Myers at the convenience store, Mrs. Myers was bleeding and distraught. Mrs. Myers' ear had been ripped or torn, and she had a lot of coagulated blood, welts, and marks on her arm and upper torso area that were consistent with being struck with a stick.

Officer Lawson said that she then went to the defendant's residence and described his appearance when he answered the door:

He was wearing just his underwear. And he stated that he had been asleep for several hours. He didn't have any marks on him except for a hickey on the right side of his neck. There was a mark there and I asked him what that was, and he advised that it was a hickey.

When Officer Lawson asked the defendant what had happened to Mrs. Myers, he said that he had been asleep for several hours. The defendant told Officer Lawson that he was taking medication for a recent head injury, and she saw a prescription bottle for Hydrocodone that had been filled with a quantity of sixty pills three days earlier, but only four pills remained in the bottle. Officer Lawson also recovered a broken stick, which appeared to be “a paint roller extension,” from the defendant's residence.

Testifying for the defense, the defendant's mother, Joyce Downs, said that on July 3, 2006, the defendant and Mrs. Myers argued, and she saw Mrs. Myers “striking at [the defendant] with her hands.” The defendant told Mrs. Myers to leave but would not give her the car keys because she had been drinking and did not have a license or insurance. Downs offered to drive Mrs. Myers to her parents' house, and they left. En route, they passed the convenience store and Mrs. Myers asked

Downs to stop and let her out there. Downs described Mrs. Myers' physical condition that day as "fine" and said she did not see any blood on her.

The defendant testified that he moved to a different residence because he had been injured in the June 11, 2006, fight and had "some money problems." He admitted that he did not inform his probation officer of the move, explaining that he had planned to tell her at their next scheduled meeting but was arrested for violating his probation the day before. Regarding the July 3, 2006, incident, the defendant testified that he was angry with his wife because she had stayed out all night and when she arrived home, he told her "to go back to her boyfriend's house, you know." According to the defendant, they argued, and she got the stick and hit him in the leg "a couple of times." He then pushed her into the television and entertainment center and heard his mother yelling at them. He went into the kitchen, and Mrs. Myers subsequently left with his mother. He denied that he broke the stick by hitting Mrs. Myers.

On cross-examination, the defendant acknowledged that he met with his probation officer on June 2, 2006, and that she told him he had to begin his anger management classes before their next meeting which was scheduled for the "first Friday" of the following month. He also acknowledged that he waited until the day before their scheduled meeting to call her to obtain the telephone number to set up the classes, explaining the delay by saying that "a lot of stuff had happened . . . with getting hurt and hospitals." He confirmed that he had been working but owed outstanding probation fees and that he had spoken to his probation officer after he was arrested for the July 3, 2006, incident but did not tell her about the arrest.

At the close of the hearing, the trial court found, for a number of reasons, that the defendant had violated his probation:

[The defendant] is on probation for domestic assault. And now he's charged with violating his probation by committing another domestic assault. But this is not every domestic assault, this is just this one.

The proof is that [the defendant] has violated his probation by several things. Number one, not following the directions of his probation officer in enrolling in anger management, which was also a condition of his probation the first time. The other is using intoxicating beverages and controlled substances against the rules of probation, which intoxicants are a big part of a lot of assault cases. It was a big part of the assault that was committed against you. That's a violation of probation.

[The defendant] was arrested and charged with assaulting his wife on the 3rd day of July and did not report that to his probation officer. That is also a violation.

So, what should be done, what is the likelihood of [the defendant] following the rules of probation[?] And I say the likelihood of [the defendant] following the rules of probation is absolutely zero. What [the defendant] wants to do is drink and

argue and fight with people, whether his wife or friends or whomever. It's just a way of life. That's obvious from this original charge, from this new charge, and from his behavior the four months or five that he's been on probation.

So, the probation is revoked. You'll serve this 11-month and 29-day sentence. And that's the best I can do to keep [Mrs. Myers] away from [the defendant].

ANALYSIS

The defendant argues that the trial court erred by revoking his probation, saying that the State did not "show that the defendant's failure to attend the [anger management] classes was willful" and "there was no evidence that [the] defendant sought to deceive his probation officer or hide the fact of his [July 3] arrest." Further, he asserts that although he consumed intoxicating beverages, he was over the legal drinking age and only had a small amount of alcohol in his home.

A trial court is granted broad authority to revoke a suspended sentence and to reinstate the original sentence if it finds by the preponderance of the evidence that the defendant has violated the terms of his or her probation and suspension of sentence. See Tenn. Code Ann. §§ 40-35-310, -311 (2006). The revocation of probation lies within the sound discretion of the trial court. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991); State v. Stubblefield, 953 S.W.2d 223, 226 (Tenn. Crim. App. 1997); State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). We review this issue, therefore, for an abuse of discretion.

To show an abuse of discretion in a probation revocation case, "a defendant must demonstrate 'that the record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation has occurred.'" State v. Wall, 909 S.W.2d 8, 10 (Tenn. Crim. App. 1994) (quoting State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)). The proof of a probation violation need not be established beyond a reasonable doubt, but it is sufficient if it allows the trial court to make a conscientious and intelligent judgment. Harkins, 811 S.W.2d at 82 (citing State v. Milton, 673 S.W.2d 555, 557 (Tenn. Crim. App. 1984)). Additionally, "an appellate court should find that a trial court has abused its discretion only when the trial court has applied an incorrect legal standard, or has reached a decision which is illogical or unreasonable and causes an injustice to the party complaining." State v. Ruiz, 204 S.W.3d 772, 778 (Tenn. 2006) (citing Howell v. State, 185 S.W.3d 319, 337 (Tenn. 2006)).

We find no abuse of discretion because a preponderance of the evidence easily establishes that the defendant violated his probation in at least five ways: (1) using alcohol and cocaine; (2) moving his residence without notifying his probation officer; (3) failing to attend anger management classes; (4) failing to immediately notify his probation officer of his July 3, 2006, arrest for aggravated assault; and (5) committing violence against his wife.

CONCLUSION

Based on the foregoing authorities and reasoning, we affirm the trial court's order revoking the defendant's probation and reinstating his original sentence.

ALAN E. GLENN, JUDGE